

VIRGIE DOWLER

IBLA 81-917

Decided September 10, 1981

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring mining claims abandoned and void. N MC 133863 through N MC 133884.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally -- Regulations: Generally -- Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Mining Claims: Assessment Work

The filing of evidence of annual assessment work in a county recording office does not constitute compliance with the recordation requirements of 43 CFR 3833.2-1.

APPEARANCES: VIRGIE DOWLER, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Virgie Dowler has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated July 2, 1981, declaring the Spectrum Nos. 6 through 22, Spectrum Nos. 25 through 28, and Spectrum No. 31 lode mining claims, N MC 133863 through N MC 133884, abandoned and void for failure to file evidence of annual assessment work on or before December 30, 1980, pursuant to section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and its implementing regulations, 43 CFR 3833.2-1(c) and 3833.4(a).

The claims in this case were located in December 1979. Copies of the notices of location were filed with BLM on December 17, 1979. The file contains no indication that any evidence of assessment work was filed with BLM in 1980.

Appellant states the claims were owned by her deceased husband, Carl Dowler, and Roy Stewart. The assessment work for 1980 was performed and evidence thereof recorded in Nye County, Nevada, on October 6, 1980. Appellant believes that her husband filed the proofs of labor with BLM following the recording in Nye County, as he was fully cognizant of the need for recording with BLM, had prepared the requisite copies for such recording, and made a trip to the BLM office on October 7, 1980, for that purpose.

[1] Section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located after October 21, 1976, to file evidence of assessment work for the claim with BLM prior to December 31 of each year after the calendar year in which the claim was located. Failure to so file is statutorily considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4. See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

When the claim owners failed to file timely either an affidavit of assessment work or notice of intention to hold the claims, BLM properly declared the claims to have been abandoned and void. Robert R. Eisenman, 50 IBLA 145 (1980).

[2] There is no way, in retrospect, to know why Carl Dowler failed to file his proofs of assessment work on October 7, as he intended. However, the responsibility for complying with the recordation requirements rested with the claims owners. This Board has no authority to excuse lack of compliance. Lynn Keith, *supra*; A. J. Grady, 48 IBLA 218 (1980); Glen J. McCrorey, 46 IBLA 355 (1980).

[3] Accomplishment of a proper recording with a county does not relieve the claim owner from filing the proper instruments with BLM under the requirements of FLPMA and the implementing regulations. A valid or timely filing with a county does not constitute a FLPMA filing. There are two separate requirements to be met in the annual recordation of evidence of assessment work; compliance with the one does not constitute compliance with the other. Johannes Soyland, 52 IBLA 233 (1981).

Appellant should consult with BLM about the possibility of relocating the subject claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

